

United States
Circuit Court of Appeals

For the Ninth Circuit.

9

THE UNITED STATES OF AMERICA,

Appellant,

vs.

TITLE INSURANCE AND TRUST COMPANY, a
corporation, SECURITY TRUST AND SAV-
INGS BANK, a corporation, HARRY CHAND-
LER, O. P. BRANT, M. H. SHERMAN and
E. P. CLARK,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for
the Southern District of California,
~~Southern~~ Division.

Northern

FILED
APR 3 - 1922

F. D. MONCKTON,
CLERK

No.

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Plaintiff and Appellant:

JOSEPH C. BURKE, Esq., United States District Attorney, and

GEORGE A. H. FRASER, Esq., Special Assistant to the Attorney General, Federal Building, Los Angeles, Calif.

For Defendants and Appellees:

O'MELVENY, MILLIKIN & TULLER, Title Insurance Building, Los Angeles, Calif.

United States of America, ss.

To TITLE INSURANCE AND TRUST COMPANY, a corporation, SECURITY TRUST AND SAVINGS BANK, a corporation, HARRY CHANDLER, O. P. BRANT, M. H. SHERMAN and E. P. CLARK, Defendants, and to O'MELVENY, MILLIKIN & TULLER, their Attorneys,

GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 7th day of April A. D. 1922, pursuant to Order allowing Appeal entered March 10, 1922, and on file in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain case wherein The United States of America is Plaintiff and Appellant and you are Defendants and Appellees to show cause, if any there be, why the Decree of said Court made and entered the 6th day of October, 1921, dismissing Plaintiff's Bill of Complaint in the said Order allowing Appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Oscar A. Trippet,
United States District Judge for the Southern
District of California, this 10th day of March,

A. D. 1922, and of the Independence of the
United States, the one hundred and forty-sixth.
Trippet.

U. S. District Judge for the Southern District of
California.

[Endorsed]: B 68 Nor. Div. *In the* United States
Circuit Court of Appeals *for the* NINTH CIRCUIT
THE UNITED STATES OF AMERICA, Appellant,
vs. TITLE INSURANCE AND TRUST COM-
PANY, a corporation, SECURITY TRUST AND
SAVINGS BANK, a corporation, HARRY CHAN-
DLER, O. P. BRANT, M. H. SHERMAN and E. P.
CLARK, Appellees. Citation Service of the within Ci-
tation is hereby accepted on behalf of Defendants and
Appellees within named, at Los Angeles, California,
this 10 day of March, 1922. O'Melveny Millikin &
Tuller, Attorneys for Defendants and Appellees.
FILED MAR 11 1922 CHAS. N. WILLIAMS,
Clerk *By* Edmund L Smith *Deputy Clerk* Eq. R. Bk.

UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF CALIFORNIA, NORTH-ERN DIVISION.)	IN THE DIS-TRICT COURT SS. NO. B-68 IN EQUITY.
--	---	--

THE UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
TITLE INSURANCE AND TRUST COMPANY, a corporation, SECURITY TRUST AND SAVINGS BANK, a corporation, HARRY CHANDLER, O. P. BRANT, M. H. SHERMAN and E. P. CLARK,	)	BILL OF COMPLAINT.
)	
)	
Defendants.)	

COMES NOW the plaintiff above named, by its attorneys, and complaining of defendants alleges and says:

I.

This suit is brought under the authority and by the direction of the Attorney General of the United States at the request of the Secretary of the Interior, and is brought by plaintiff in furtherance of its Indian policy and also in its capacity, and to discharge its obligations, as guardian for sundry Indians known as the Tejon band or tribe of Indians now and from time immemorial residing on certain premises hereinafter described,

in what is now Kern County, California; that said Indians are and from time immemorial have been tribal Indians, and at all times since July 7, 1846, have been and now are wards of the United States and at all times herein mentioned were and still are incompetent to manage their own affairs; that at all of said times they were and still are what are commonly called Mission Indians.

II.

That defendant Title Insurance & Trust Company is a corporation organized and existing under and by virtue of the laws of the State of California, and that its principal office and principal place of business are in the City of Los Angeles, in said State;

That defendant Security Trust and Savings Bank is a corporation organized and existing under and by virtue of the laws of the State of California, and that its principal office and principal place of business are in the City of Los Angeles, in said State;

That defendants Harry Chandler, O. P. Brant, M. H. Sherman and E. P. Clark are citizens and residents of the State of California, and of the Southern judicial district thereof.

III.

That the jurisdiction of the Court in this suit depends upon the fact that the United States of America is plaintiff herein.

IV.

That defendant Title Insurance and Trust Company is and ever since September 19, 1916, has been

the owner in fee and, except as hereinafter set forth, is and ever since said date has been by itself or through the other defendants above named, in possession and control of the following described premises situate in Kern County, California, to-wit: Starting from corner No. 8 of El Tejon ranch, as found and established in the resurvey thereof of October, 1880, on file in the office of the United States Surveyor General, San Francisco, California, South $84^{\circ} 21'$ East 340.10 chains (22,448 ft.) to corner No. 9; thence North $22^{\circ} 45'$ East 53.52 chains (3,532 ft.) to corner No. 10; thence North $56^{\circ} 0'$ West 229.98 chains (15,180 ft.) to corner No. 11; thence North $43^{\circ} 15'$ West 93.27 chains (6,153 ft.) to the intersection of the ranch line of said ranch with the township line between Township 11 North and Township 12 North, Range 17 West, San Bernardino Base and Meridian; thence South $26^{\circ} 0'$ West 237 chains (15,632 ft.) to point of beginning, situate in Sections 18 and 19, Township 11 North, Range 16 West, and Sections 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 24, Township 11 North, Range 17 West, San Bernardino Base and Meridian, containing 5364 acres more or less, together with full rights in and to the waters of Tejon Creek and Cedar Creek which flow through said premises and the right to use on and in connection with said premises for irrigation of the irrigable lands thereof and for watering stock and for domestic purposes at all times throughout the year seven cubic feet of water

per second of time with a priority of immemorial antiquity, the same being the first right and priority in said streams and each of them; that said premises form part of what is known as Rancho El Tejon.

That defendant Security Trust & Savings Bank is trustee under and by virtue of a certain deed of trust made and executed as of May 1, 1916, wherein and whereby El Tejon Ranchos, Inc., a corporation, then owner in fee of the premises last above described and other property, conveyed to said Security Trust & Savings Bank said premises and other property in trust to secure the payment of 1000 notes of \$1,000 each, dated May 1, 1916 and due May 1, 1926, made and executed or to be made and executed by said El Tejon Ranchos, Inc., or any of such notes at any time issued, all on sundry terms and conditions and under divers uses and trusts as in said deed of trust set forth, which said deed of trust is recorded in Book 315, page 132, of the records of Kern County, and in Book 6304, page 262, of the records of Los Angeles County, California, and is still outstanding and unreleased.

Plaintiff is informed and believes and on such information and belief avers, that defendants Harry Chandler, O. P. Brant, M. H. Sherman and E. P. Clark, and each of them, claim some right, title, interest or estate in and to the premises in this paragraph specifically described, but the precise nature and extent of such claim, right, title, interest or estate is to plaintiff unknown; nor has plaintiff, by the exer-

cise of diligence, been able to ascertain the same, except that plaintiff on information and belief avers that said last named defendants are and for a long time past have been in possession and control of said premises, either by and through themselves and their agents or conjointly with defendant Title Insurance & Trust Company, and either under some individual claim of right or under some right or claim of right derived from defendant Title Insurance & Trust Company, the owner of the fee title, but the facts in this regard are to plaintiff unknown, nor has plaintiff by the exercise of diligence been able to discover them. But plaintiff avers that each and every right, title, interest, claim or demand of any or all of the defendants herein, in or to said premises in this paragraph described, is subject to a right of occupancy, use and possession of the whole of said premises, including water rights as above described, vested in said band or tribe of Tejon Indians, and to actual possession by said band or tribe of a portion of said premises and water rights as hereinafter more particularly set forth.

V.

That in and prior to the year 1843 said premises above described were within and subject to the sovereignty and jurisdiction of the Republic of Mexico and were part of the ungranted lands of that republic; that, however, from time immemorial prior to said year and during the entire period of Spanish and Mexican sovereignty over the territory now em-

braced within the State of California, said premises, and as well a much larger tract of which said premises were and are a part, were inhabited by the tribe known to the Spaniards and Mexicans as Tejon Indians; that said Tejon Indians were and are the ancestors and predecessors of the existing band or tribe of that name; that up to the years 1843 and 1845, and for a long time thereafter, as hereinafter set forth, said Tejon Indians resided upon and exclusively possessed, used and cultivated said premises above described, and as well said larger tract, raising crops and pasturing cattle, horses and other stock thereon, gathering the natural products of the soil thereof and residing thereon in permanent dwellings; that said Tejon Indians at all times herein mentioned were and now are agricultural, pastoral, sedentary and peaceful Indians; that up to said years 1843 and 1845 not only was said use and possession of said Indians exclusive, peaceful, open, notorious, adverse and undisturbed, but no claim, title or right to said premises or said larger tract, or any portion of either, was made or asserted by any other person or persons whomsoever except the general sovereignty claimed by the Kingdom of Spain or the Republic of Mexico over the same.

That from the time of the establishment of the Catholic Missions in what is now the State of California, said Tejon Indians were and still are under the spiritual jurisdiction of the Catholic church; that

they were instructed in Christianity and in the arts of civilization by the Mission Fathers; and that a church was built for them on said premises, in which services were and still are from time to time held.

That under and by virtue of the laws both of Spain and of Mexico said Tejon Indians were entitled to the continuous and undisturbed occupancy, possession and use of said premises, as well as of the larger tract then occupied by them, as being land needed by them for habitation, tillage and pasture, and as including trees and bushes for natural food products, wood for fuel and said water right for irrigation and domestic purposes; and that the use, occupancy and possession of the Tejon Indians as above set forth was had and exercised by them and they were protected in the same under and by virtue of said laws of Spain and Mexico, which said laws governed and remained in force over all the land herein described or referred to up to the time of the acquisition by the United States from Mexico of the territory now included within the State of California.

VI.

That on or about May 30, 1843, Jose Antonio Aguirre and Ignacio del Valle, both Mexican citizens, petitioned the Mexican Governor of California for a grant from the government of Mexico in accord with the laws of said republic, of a tract of land known as Tejon; and thereafter such proceedings were had that on or about November 24, 1843, said Governor

made and executed a grant of land to said petitioners, including the premises above described and other territory, aggregating about 98,000 acres. That said grant was made upon and subject to the following condition, among others, to-wit: "2d. No impediran el cultivo y demas beneficios que han disfrutado siempre los indios que se hallan establecidos en dho parage." which being interpreted, is:

"They must not prevent (interfere with) the cultivation and other advantages which the Indians who are found established in said place have always enjoyed."

which said grant, embodying said condition, was approved by the Departmental Assembly and delivered to said grantees on or about June 30, 1845; that said grant included the premises above described along with other territory.

VII.

That thereafter and on or about July 7, 1846, the United States succeeded the Republic of Mexico in the sovereignty of and over the territory now included in the State of California including the tract embraced in said grant; that thereafter and within the time provided by law, said grantees presented said claim for confirmation to the Board of Commissioners appointed under the Act of Congress of March 3, 1851 (9 Stat. L. 631) to ascertain and settle private land claims in California, and that thereafter such proceedings were had before and by said Board that on or about May 8, 1855 said grant was by said

Board confirmed; that in its opinion confirming said grant, said Board used the following language: "It is proper to remark in reference to this grant that it contains a reservation of such lands as may be necessary for a military establishment * * * There is also a provision requiring the grantees not to 'prevent the cultivation and other benefits that the Indians may have established in said place.' This restriction we have heretofore decided does not affect the right of property, though it may create a use in favor of the Indians living on the land at the time the grant was made to the extent actually occupied by them. This, however, is a question cognizable before another tribunal."

That an appeal was taken from the decree or decision of said Board confirming said grant to the District Court of the United States for the Southern District of California, which said Court on, to-wit, March 18, 1858, affirmed said decree or decision; that a further appeal was taken from said last named decision to the Supreme Court of the United States, which said Court on the first Monday of December, 1859, dismissed said appeal, whereby the decree or decision affirming said grant became final.

VIII.

That thereafter such proceedings were had that on, to-wit, May 9, 1863, a United States land patent was issued in due form, conveying to said Aguirre and del Valle a tract of land in said patent described em-

bracing the premises hereinbefore described and other territory, which said patent in the granting clause thereof contained the following language; "But with the stipulation that in virtue of the 15th Section of the said Act (March 3, 1851) the confirmation of this claim and this patent 'shall not affect the interests of third persons.' "

That thereafter by divers mesne conveyances the fee title to said land passed from said grantees to Title Insurance and Trust Company, defendant herein, which became the owner of said title thereto on or about September 9, 1916, and still owns and holds the same; that the right, title, interest, claim and demand of each of defendants herein, in and to said premises, is, so far as known to plaintiff, hereinabove and in Paragraph IV of this complaint set forth; that the same is subject, however, to the right of occupancy, possession and use of said premises by the Tejon Indians as hereinabove and hereinafter set forth, and except as to the actual occupancy, possession and use of said Indians of portions of said premises as hereinafter shown.

IX.

That under and by virtue of the laws, usages and customs of Spain and Mexico, the terms of the Mexican grant aforesaid and of its confirmation, the patent aforesaid, the treaty of Guadalupe Hidalgo, whereby the United States acquired from Mexico the territory now comprising the State of California, the

laws of the United States and the law of nations, said tribe or band of Tejon Indians became, were and are entitled to the full, undisturbed and continuous occupancy, possession and use of the premises hereinabove described as hereinbefore more fully set forth, unless and until the said Indian title should be extinguished by this plaintiff; that this plaintiff has never extinguished, modified or diminished said title; that said Indians maintained and enjoyed their said right of possession and use of said premises as a tribe openly, notoriously, continuously, peaceably, exclusively and without molestation for a long time after said grant of 1843, confirmed in 1845, as aforesaid, but that beginning about the year 1888, or earlier, the exact date on account of the remoteness of the facts described and the lack of authentic records being unknown to this plaintiff, the grantees of said Aguirre and del Valle, being the predecessors in title and interest of defendants herein, commenced gradually to drive and exclude said band or tribe from the outer limits of the premises above described by unlawfully and forcibly prohibiting and preventing said Indians from using the same for pasture or residence, and by themselves using the same at their discretion for cattle range or agriculture, by discouraging the residence of said Indians thereon, and by pulling down or otherwise destroying the houses of said Indians thereon and destroying their crops and other improvements, and in these and other ways gradually drove and forced back said Indians and

narrowed and restricted the limits of the land actually occupied by them; that defendants when they acquired fee title to or took possession of said premises as aforesaid, in disregard and violation of said Indian right of occupancy, possession and use, forcibly and unlawfully retained possession of and appropriated and devoted to their own use all portions of the above described premises from which said Indians had been driven, as aforesaid, and ever since have used and enjoyed and still use and enjoy the same, and continue to exclude and threaten to perpetually exclude said Indians therefrom; that defendants from the time when they acquired fee title to and general possession of said premises continued for their own benefit and advantage further to extend the policy of repression and exclusion, and with full notice and knowledge of said Indian title, and forcibly and unlawfully and in disregard and defiance of the said title have, by themselves and their agents, still further driven out and driven back said Indians and have restricted their use and occupancy of said premises and made it impossible for said Indians to occupy, possess or use the greater portion of said premises at all, or any portion thereof peaceably and securely, and still continue and threaten to continue said acts and policy until said Indians are entirely driven and expelled from every portion of said premises; that these defendants in pursuance of said course have refused and still refuse to permit said Indians, or any of them to acquire or own so much as a single

head of cattle to furnish milk for their children; that they have refused and still refuse to permit them, or any of them, to own horses except in so far as the same are useful on the said ranch on which some of the Indians are employed as laborers; that they have interfered with the proper and beneficial use for irrigation, by said Indians, of the waters of the creeks flowing through said premises; that they have refused and still refuse to allow said Indians to improve or repair their huts even when said Indians had obtained and had upon the premises materials for that purpose; that they have entered upon, fenced in and used, and still use for their own purposes, land once cultivated by the Indians and needed by them for their subsistence; that when members of said band died or were driven out by defendants, by the measures above described, or otherwise, defendants have immediately pulled down their houses, destroyed their improvements and turned their gardens and cultivated grounds into cattle range and threaten to continue so to do; that they have by duress and threats of eviction forced many of said Indians employed upon said ranch to submit to a deduction from their wages of a sum alleged to represent rental for the premises occupied by them, and have brought suits in ejectment against such Indians as refused to submit to such deduction or to pay said alleged rental; that the aforesaid matters and things have been done forcibly, unlawfully and by *vis major*, and that by these and other acts of wrong and oppression the

Indians have been gradually driven off said ranch so that the numbers of those occupying the premises hereinabove described, or any portion thereof, have been reduced from about 300 to about 80, and so that the acreage actually occupied by them has been reduced from about 5364 acres to about 65 acres, which said 65 acres are still possessed, occupied, irrigated and cultivated by the remnants of said band; that unless restrained by this Court, defendants threaten to continue and will continue the policy and acts above described until all of said Indians are driven off said ranch and their occupancy, possession and use of said premises totally destroyed.

X.

That said Indian right of occupancy, use and possession of said premises above described includes the right to use the wagon roads over said ranch leading from the County roads to said premises and the use under a first right and priority in Tejon Creek and Cedar Creek of an adequate supply of water for irrigating such portions of the lands thereof as are irrigable; that from 600 to 900 acres of said premises were cultivated by said Indians as early as 1843 and continuously since, except as and until said area was restricted by the wrongful acts of defendants and their predecessors as above set forth; that of said premises from 300 to 350 acres are and always have been irrigable from the waters of Tejon Creek and Cedar Creek flowing through said premises and to

which said premises are riparian; and that an additional acreage is irrigable for early crops from the waters of said creeks; that said irrigable area was in the year 1843, and continuously since that time has been, irrigated by said Tejon Indians except as and when restricted by defendants and their predecessors, as above set forth, and that portions thereof are still irrigated by said Indians to the fullest extent to which defendants permit them to use of said water for such purpose; that of the flow of said two creeks seven cubic feet of water per second of time and water from other sources in addition is necessary for the ordinary irrigation of said irrigable area of from 300 to 350 acres.

That there is hereto attached, marked Exhibit "A" and made a part of this complaint, a colored map showing the premises above described, the land now cultivated by said Indians, the land formerly irrigated by them, the arable land within said premises, and the former and present irrigation ditches, with other details.

XI.

That in and by the Act of Congress of January 12, 1891. (26 Stat. L. 712) it was made and is the duty of the Attorney General at the request of the Secretary of the Interior, whenever the lands occupied by any band or village of Mission Indians are within the limits of a confirmed private grant, to defend the Indians in the rights secured to them in the original grant from the Mexican government and

by the Act of the State of California of April 22, 1850; that the Secretary of the Interior, through the Commissioner of Indian Affairs, has requested the Attorney General to institute this suit; that the rights of the Tejon Indians under the Mexican grant here involved are as hereinabove set forth; that said California Act of 1850 provides in effect, among other things, that persons and proprietors of land on which Indians are residing shall permit such Indians peaceably there to reside in pursuit of their usual avocations for the maintenance of themselves and their families; with further provisions whereby such proprietor may, by proceedings in Court, obtain the separation of sufficient land for the necessary wants of said Indians, including the site of their village or residence, if they so prefer it, specifically requiring that no such selection shall be made to the prejudice of such Indians and that they shall not be forced to abandon their home or village where they have long resided.

XII.

That by reason of the appropriation and use by defendants of portions of said premises from which said Indians were excluded by defendants' predecessors in title, and the continued exclusion of said Indians therefrom by defendants as above set forth, said Indians have been damaged in the sum of \$75,000.

That by reason of the further expulsion and exclusion of said Indians by defendants from other

portions of said premises, and the continued appropriation and use thereafter by defendants of such other portions as above set forth, said Indians have been damaged in the further sum of \$2,500.

That by reason of the molestation of said Indians by defendants and the restrictions and limitations placed by defendants on said Indians in the use and enjoyment of those portions of said premises still occupied by them as above set forth, said Indians have been damaged in the further sum of \$50,000.

WHEREFORE, plaintiff prays

1. That defendants be required to make full disclosure and discovery of the matters aforesaid, and especially as to the nature of the right, title, interest, estate, claim or demand of defendants Harry Chandler, O. P. Brant, M. H. Sherman and E. P. Clark in or to said premises or to the possession or control thereof, or any part thereof, according to the best of their knowledge and information, and full, true, direct and perfect answers make to the matters hereinbefore charged.

2. That the Indian title of occupancy, possession and use of and to the premises hereinabove described, including said described water rights, and said rights of way, and every part and portion thereof, be quieted in said Indians as against the fee title, and any and every title, possessory or otherwise, of defendants herein, and each and all of them; and decreed to be superior to and free from the lien of the deed of trust hereinbefore referred to; and that said Tejon Indians,

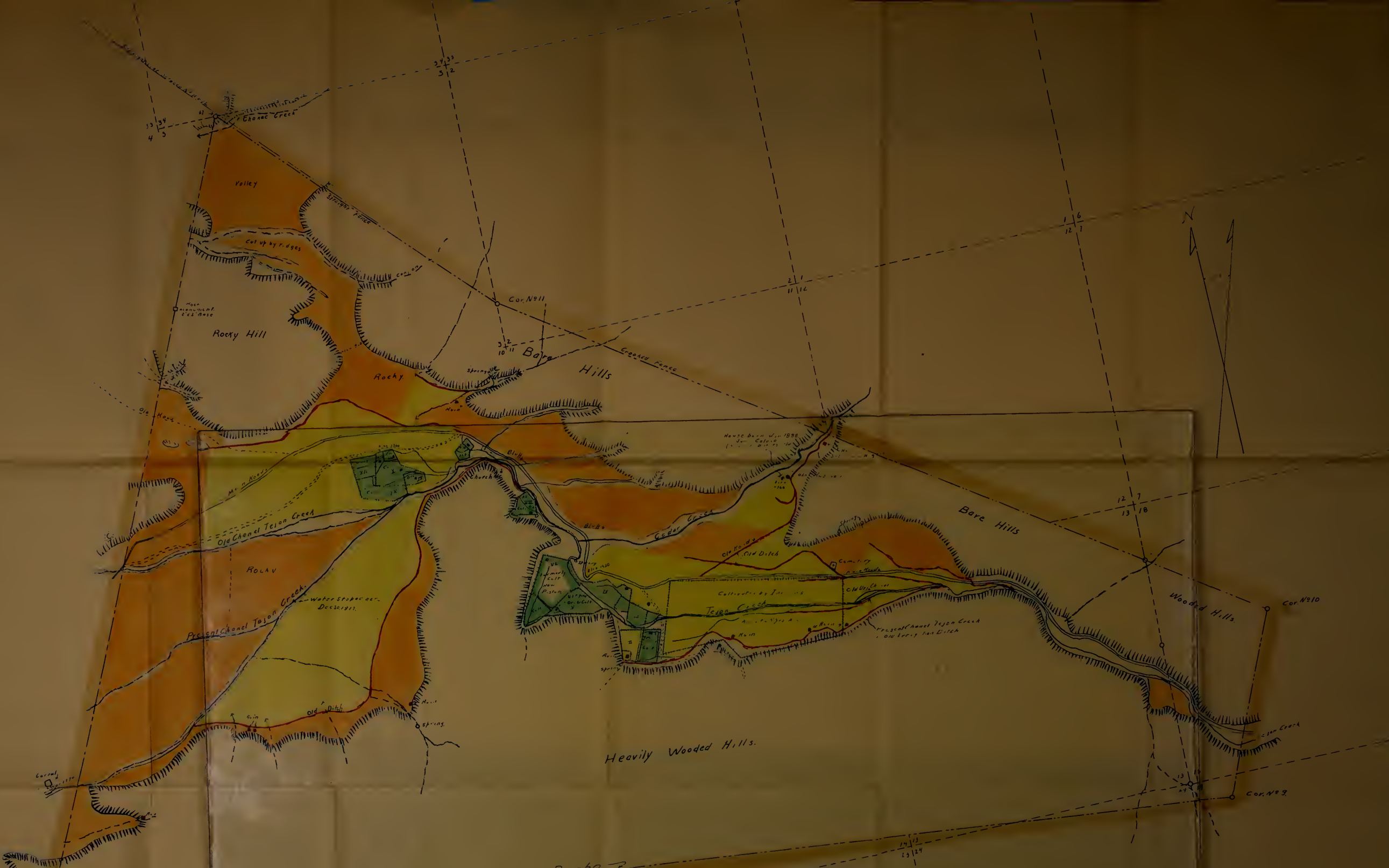
including all living members of said band heretofore driven or forced from said premises by defendants or their predecessors, and the descendants of any and all of said Indians be held, adjudged and decreed to have full and perpetual right and title to occupy, possess, use and enjoy said premises and all thereof, including the rights in the waters of said Tejon and Cedar creeks as above described, and all other waters to which said premises are riparian, and including all the natural products of said premises, whether by agriculture, horticulture, irrigation, cattle raising, or any other ordinary method of use, without interference, restriction or molestation of any sort, nature or description, by or from defendants herein or any of them, or any person or persons claiming under or through them or any of them, as long as any of said Indians or any of their children or descendants continue to occupy or dwell upon said premises; but without any right to sell, dispose of or encumber said title to said premises, or any part thereof, except to or in favor of or with the consent of the United States.

3. That in and by the final decree herein, defendants and each and all of them and all their heirs, executors, administrators, agents, representatives, successors and assigns, and any and all persons claiming under or through them, or any of them, be perpetually enjoined from interfering with said Indian use, occupation or possession of said premises or any part thereof, in any manner or by any means, direct or indirect, or from harassing, molesting or restrict-

ing said Indians in any manner, or by any means, direct or indirect, in the full exercise and enjoyment by them of said Indian title; and that in the meantime a preliminary injunction be issued preserving the status quo and enjoining and prohibiting any acts or interference with or molestation of said Indians, or any restriction or limitation of the use and occupancy now enjoyed by them, or the bringing of further prosecution of any suits or actions against them arising out of such use or occupancy, by defendants or their representatives or anyone claiming by or through them or any of them, until final decree.

4. That judgment be entered against defendants and in favor of plaintiff for the use and benefit of all of said Tejon Indians in the sum of \$127,500 as compensatory damages for the wrongful and illegal appropriation and use by defendants of portions of said premises from which said Indians had been excluded by defendants' predecessors in title, and for the continued exclusion of said Indians from said portions by defendants; and for the wrongful and illegal exclusion of said Indians from other portions of said premises by defendants and the continued use of said other portions by defendants as above set forth; and for the restriction by defendants of the use, possession and enjoyment by said Indians of the portion of said premises still actually held by them as aforesaid.

5. That plaintiff may have such other and further relief as to the Court may seem proper and that



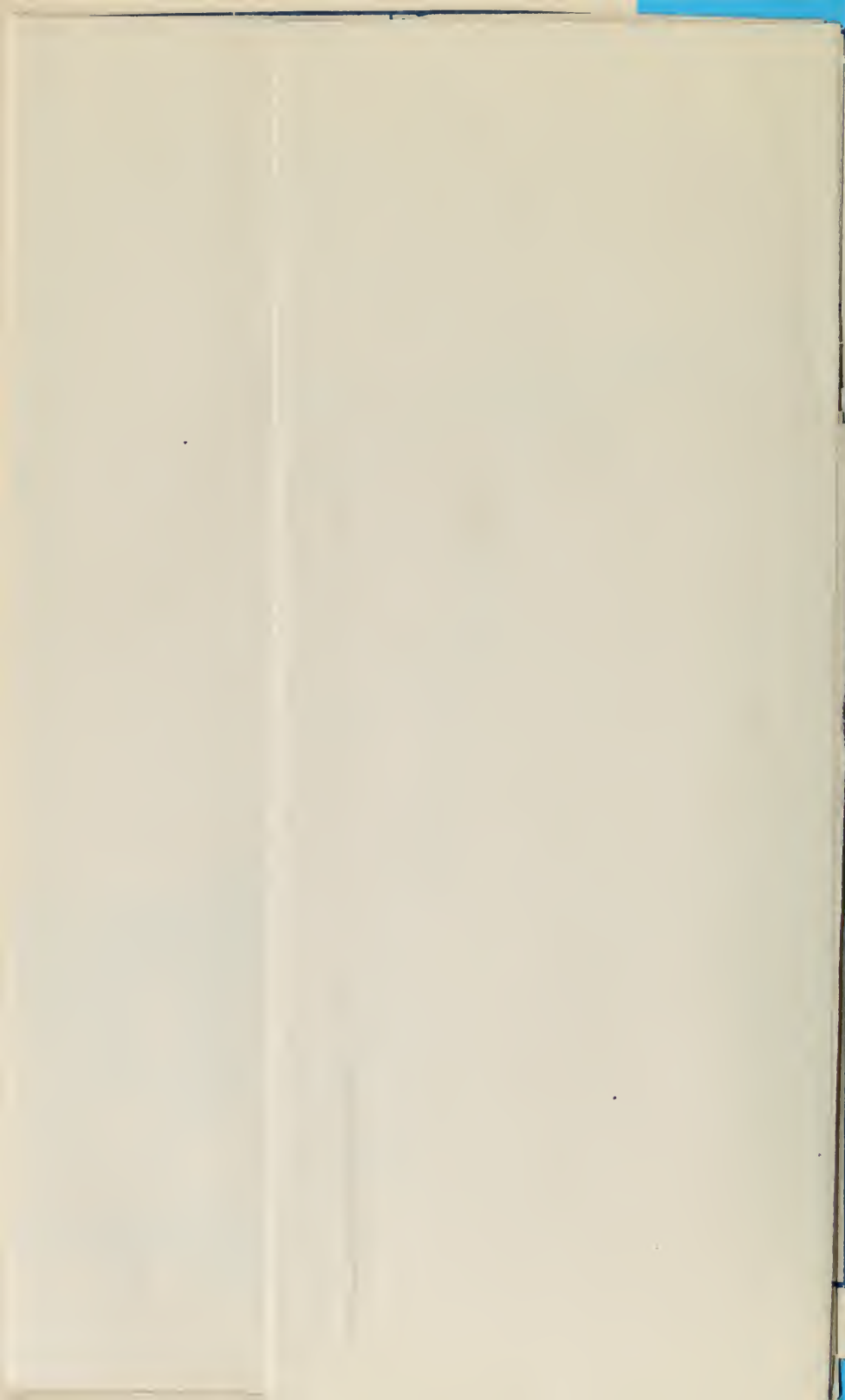


LEGEND

- Land now cultivated by Indians.
- " formerly irrigated.
- Arable land.
- Former irrigation ditches.

DEPARTMENT OF THE INTERIOR
U.S. INDIAN IRRIGATION SERVICE
MAP OF
LANDS OCCUPIED BY TEJON INDIANS
KERN COUNTY, CALIFORNIA.

Scale in feet
0 500 1000 2000 3000 4000
Survey by H. Palmer, Dec 1917



defendants be decreed to pay all the costs of this proceeding.

Robert O'Connor

United States Attorney

Address:

Federal Bldg., Los Angeles, Cal.

John F. Truesdell,

230 Post Office Bldg. Denver, Colo.

George A. H. Fraser,

“ “ “ “ “

Special Assistants to
the Attorney General,
Attorneys for Plaintiff.

(MAP)

[Endorsed]: No. B68. Eq. IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SO. DISTRICT *of* CALIFORNIA NORTHERN DIVISION. UNITED STATES OF AMERICAM Plaintiff, *vs.* TITLE INSURANCE and TRUST COMPANY, a Corporation, et al., Defendants. BILL OF COMPLAINT. FILED Dec 20 1920

CHAS. N. WILLIAMS, Clerk *By* R S Zimmerman
Deputy Clerk.

UNITED STATES OF AMERICA
District Court of the United States
SOUTHERN DISTRICT OF CALIFORNIA
NORTHERN DIVISION.

In Equity

The President of the United States of America,
Greeting!

To Title Insurance and Trust Company, a corporation,
Security Trust and Savings Bank, a corporation,
Harry Chandler, O. P. Brant, M. H. Sherman
and E. P. Clark,

You Are Hereby Commanded, *That you be and appear in said District Court of the United States aforesaid, at the Court Room in Fresno, California, on or before the twentieth day, excluding the day of service, after service of this subpoena upon you, to answer a Bill of Complaint exhibited against you in said Court by The United States of America, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit, under the penalty of FIVE THOUSAND DOLLARS.*

(Seal) Witness, *The Honorable OSCAR A. TRIPPET Judge of the District Court of the United States, this 20th day of December in the year of our*

Lord one thousand nine hundred and twenty and of our Independence the one hundred and forty-fifth.

Chas. N. Williams, Clerk.

By R S Zimmerman Deputy Clerk

MEMORANDUM PURSUANT TO RULE 12,
OF RULES OF PRACTICE FOR THE COURTS
OF EQUITY OF THE UNITED STATES PROM-
ULGATED BY THE SUPREME COURT, NO-
VEMBER 4, 1912.

On or before the twentieth day after service of the subpoena, excluding the day thereof, the defendant is required to file his answer or other defense in the Clerk's Office; which (except when Court is in session and a Judge present at Fresno), is at Los Angeles, otherwise the Bill may be taken pro confesso.

Chas. N. Williams, Clerk.

By R S Zimmerman Deputy Clerk

To the Marshal of the United States for the Southern District of California:

Pursuant to Rule 12, the within subpoena is returnable into the Clerk's Office twenty days from the issuing thereof.

Subpoena Issued December 20th 1920

Chas. N. Williams, Clerk.

By R S Zimmerman Deputy Clerk.

Sou. District of Cal. ss.

I hereby certify and return, that on the 21st day of Dec. 1920 I received the within Subpoena and that

after diligent search, I am unable to find the within named defendants M. H. Sherman within my district.

C. T. Walton

United States Marshal.

By D. S. Bassett

Deputy United States Marshal.

UNITED STATES MARSHAL'S OFFICE }
SOUTHERN DISTRICT OF CALIFOR- } SS.
NIA }

I Hereby Certify, *that I received the within writ on the 21st. day of December, 1920, and personally served the same with Bill of Complaint on the 22nd. day of December, 1920, on Title Insurance & Trust Co. Security Trust & Savings Bank, Harry Chandler, O. F. Brant, & E. P. Clark by delivering to and leaving with W. B. Brown, Asst. Sec. J. F. Sattori, Pres. Harry Chandler, O. F. Brant and E. P. Clark said defendants named therein, personally, at the County of Los Angeles in said district, a copy thereof*
(Seal) *Los Angeles,* C. T. WALTON,

U. S. Marshal.

Dec. 22nd, 1920.

By D S Bassett Deputy

[Endorsed]: *Marshal's Civil Docket No. 4156 No. B 68 Equity. U. S. District Court SOUTHERN DISTRICT OF CALIFORNIA Northern Division. IN EQUITY The United States of America, vs. Title Insurance and Trust Company, a Corporation, SUBPOENA FILED FEB 7 1921 CHAS. N. WIL-*

LIAMS, Clerk *By* P. W. Kerr *Deputy Clerk* Eq. R.
Bk

IN THE UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF CALIFORNIA,
NORTHERN DIVISION.

THE UNITED STATES OF AMERICA,	Plaintiff	} MOTION TO DISMISS No. B 68 In Equity
- vs -		
TITLE INSURANCE AND TRUST COMPANY, a corporation, SECURITY TRUST AND SAVINGS BANK, a corporation, HARRY CHANDLER, O. P. BRANT, M. H. SHERMAN and E. P. CLARK	Defendants.	

COME NOW Title Insurance and Trust Company, a corporation, Security Trust and Savings Bank, a corporation, Harry Chandler, O. P. Brant, M. H. Sherman and E. P. Clark, defendants herein, and jointly and severally move the court to dismiss the Bill of Complaint herein on the ground that the same does not state any matter of equity entitling plaintiff to relief prayed for, nor to any relief, nor are the facts stated sufficient to entitle plaintiff to any relief against these defendants, or any of them.

WHEREFORE, these defendants pray for judgment of this court whether they, or any of them, shall be required further to answer and further pray

that said Bill of Complaint be dismissed with costs of these defendants.

C. H. Brock

J. N. Hastings

O'Melveny Millikin & Tuller

Walter K. Tuller

Solicitors for defendants.

I, Walter K. Tuller, one of the solicitors for defendants in the above entitled action, do hereby certify that the foregoing motion, in my opinion, is well founded in law, and that the same is not made for purposes of delay.

Walter K. Tuller.

[Endorsed]: *No. B 68 In Equity IN THE United State District Court, IN AND FOR THE Southern District of California, Northern Division. THE UNITED STATES OF AMERICA Plaintiff, - vs - TITLE INSURANCE AND TRUST COMPANY, a corp, et al. Defendants. MOTION TO DISMISS. Received copy of the within Motion to Dismiss this 7" day of Jan. 1921 Robt. OConnor. F attorney for ptff. FILED JAN 7 1921 CHAS. N. WILLIAMS, Clerk, By R S Zimmerman Deputy Clerk O'MELVENY, MILLIKIN & TULLER SUITE 825 TITLE INSURANCE BLDG. N. E. corner Fifth & Spring Sts. Los Angeles, Cal. Attorneys for Defendants.*

At a stated term, to wit, the May A. D. 1921 Term of the District Court of the United States of Amer-

ica, within and for the Northern Division of the Southern District of California held at the court room thereof in the City of Los Angeles, California on Thursday the Sixth day of October in the year of our Lord one thousand nine hundred and twenty-one.

PRESENT: THE HONORABLE Oscar A. Trippet District Judge.

The United States of America,	}	
Plaintiff	}	
vs.	}	
Title Insurance and Trust Com-	}	No. B 68 Equity
pany a corporation, Security	}	
Trust and Savings Bank, a corpo-	}	
ration, Harry Chandler, O. P.	}	
Brant, M. H. Sherman and E. P.	}	
Clark	}	
Defendants	}	

This cause coming on at this time EX PARTE; Robert B Camarillo, Esq., appearing on behalf of the Government and——Esq. appearing on behalf of the defendants, and a final decree of dismissal having been presented to the court at this time and now, pursuant to a motion made by defendant's attorney as aforesaid, it is by the court ordered that said decree be signed, filed and entered, said plaintiff's attorney having excepted to the order granting motion to dismiss and to signing of decree. Said decree is as follows, to wit:

THE UNITED STATES OF
AMERICA,

VS

No. B 68

In Equity

DECREE
DISMISSING
BILL OF
COMPLAINT.

Defendants.

The plaintiff elects to stand upon its bill of complaint and to said order and to this decree plaintiff takes exception and said exception is hereby allowed,

Trippet Judge

Approved as to form as provided in Rule 45 (approved as to form, Robert B. Camarillo, Asst. U. S. Attorney) Decree entered and recorded, Oct 6 1921.

Chas. N. Williams Clerk

Louis J Somers Deputy.

Eq. JR 8/348

[Endorsed]: *No. B 68 IN THE DISTRICT COURT OF THE UNITED STATES FOR THE Southern District of California Southern Division THE UNITED STATES OF AMERICA, Plaintiff, vs. TITLE INSURANCE & TRUST CO., a corporation, et al, Defendants DECREE DISMISSING BILL OF COMPLAINT FILED OCT 6 1921 Chas. N. Williams, Clerk Louis J. Somers Deputy*

WHEREUPON, said Bill of Complaint, Subpoena ad res. Motion to Dismiss, and Decree of Dismissal are hereto annexed; the said Motion to Dismiss being duly signed, filed and enrolled pursuant to the practice of said District Court.

(Seal) ATTEST my hand and the seal of said District Court, this 22 day of October, A. D., 1921.

CHAS. N. WILLIAMS, Clerk,

By Louis J Somers

Deputy Clerk.

UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF CALIFORNIA, NORTH-EARN DIVISION.)	IN THE DIS-TRICT COURT OF SS. NO. B-68 IN EQUITY.
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THE UNITED STATES OF AMERICA,)	PETITION FOR
)	APPEAL TO
)	THE UNITED
Plaintiff,)	STATES
	)	CIRCUIT
vs.	)	COURT OF
	)	APPEALS FOR
TITLE INSURANCE AND TRUST COMPANY, a corporation, SECURITY TRUST AND SAVINGS BANK, a corporation,	)	THE NINTH
HARRY CHANDLER, O. P.	)	CIRCUIT.
BRANT, M. H. SHERMAN and)	
E. P. CLARK,)	
)	
Defendants.)	

The above named plaintiff, conceiving itself aggrieved by the judgment and decree of dismissal made and entered on the 6th day of October, 1921, in the above entitled cause, does hereby appeal from said judgment and decree to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the Assignment of Errors filed herewith, and prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said judgment and decree were made and entered, duly authenticated, may be sent to and filed with said the United States Circuit Court of Appeals

for the Ninth Circuit, and that a citation be issued as provided by law.

Joseph C. Burke

United States Attorney.

George A. H. Fraser,

Special Assistant to
the Attorney General,
Attorneys for Plaintiff.

[Endorsed]: UNITED STATES OF AMERICA,
SO. DISTRICT OF CALIFORNIA, NORTHERN
DIVISION. THE UNITED STATES OF AMER-
ICA, Plaintiff - vs - TITLE INSURANCE AND
TRUST COMPANY, a corporation, SECURITY
TRUST AND SAVINGS BANK, a corporation,
HARRY CHANDLER, O. P. BRANT, M. H.
SHERMAN and E. P. CLARK, Defendants. IN
THE DISTRICT COURT No. B-68 IN EQUITY.
PETITION FOR APPEAL TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT. FILED Mar 10 1922 Chas.
N. Williams, Clerk By Edmund L. Smith *Deputy*
Clerk

UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF CALIFORNIA, NORTH-ERN DIVISION)	IN THE DISTRICT COURT, SS. No. B-68
)	IN EQUITY.

THE UNITED STATES OF AMERICA,)
-------------------------------	---

Plaintiff,)
------------	---

vs.)
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TITLE INSURANCE AND TRUST COMPANY, a corporation, SECURITY TRUST AND SAVINGS BANK, a corporation, HARRY CHANDLER, O. P. BRANT, M. H. SHERMAN and E. P. CLARK,)	ASSIGNMENT OF ERRORS.
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Defendants.)
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COMES NOW the plaintiff above named and respectfully represents that in the record, proceedings and decree in the above entitled cause, there is manifest error, in this, to-wit:

1: That the Court erred in sustaining defendants' motion to dismiss the bill of complaint herein.

2: That the Court erred in making and entering the final decree herein after plaintiff had elected to stand on its complaint.

3: That the Court erred in dismissing the bill of complaint in said cause, in and by said final decree.

4: That said final decree is contrary to law and equity in this, to-wit: That the motion to dismiss said bill of complaint should have been overruled and defendants required to answer said bill of complaint.

5: That the Court erred in refusing and denying the injunction prayed in said bill of complaint.

6: That the Court erred in holding, in and by said final decree, that said bill of complaint does not state any matter of equity entitling plaintiff to the relief prayed for or any relief, and in holding therein and thereby that the facts stated in said bill are not sufficient to entitle plaintiff to the relief prayed for or to any relief against defendants or any of them.

7: That the Court erred in holding in and by said final decree that the Tejon Indians mentioned in said complaint abandoned and lost all and, singular the claims, rights, titles and interests of occupancy and possession described in said complaint by failure to present the same to the Commission appointed under and by virtue of the Act of Congress of March 3, 1851 (9 Stat. L. 631) to adjust land claims in California.

8: That the Court erred in holding in and by said decree that the patent issued by the United States to defendants mentioned in said complaint and covering the lands in said complaint described is conclusive of the title of defendants, and that under and by virtue of said patent said title is free from, clear of and not subject to any claim, right, title and interest of the Tejon Indians set forth in said bill of complaint.

9: That the Court erred in holding in and by said decree that said Tejon Indians are not and were not "third parties" whose rights under said Act of March 3, 1851, remained and remain unaffected by the issuance of said United States patent to defendants.

10: That the Court erred in holding in and by said decree that defendants' title was not and is not now charged with and subject to the Indian right, title and interest of occupancy, use and possession described in the complaint.

11: That the Court erred in holding in and by said decree that said Act of March 3, 1851, required said Tejon Indians to appear before the Board of Commissioners created by said Act, there to set up and maintain said title of occupancy and possession, or for any purpose, or at all.

12: That the Court erred in holding in and by said decree that under said Act of March 3, 1851, said Tejon Indians and all other Indians similarly situated were not to be regarded as on a different footing and in a different class from those persons who were required to present their claims or titles before said Board.

13: That the Court erred in holding in and by said decree that land charged with and subject to said Indian title is not and cannot properly be known as "public domain."

14: That the Court erred in holding in and by said decree that land charged with and subject to said Indian title is not and cannot properly be known or described as "public land of the United States."

15: That the Court erred in holding in and by said decree that the Act of the State of California of April 22, 1850, later adopted by Congress as a safeguard for said Tejon Indians and other Indians by the Act of

January 12, 1891 (26 Stat. L. p. 712, Section 6) did not and does not protect said Tejon Indians, and did not and does not affect the property described in the complaint with an easement or a trust in favor of said Indians prior and superior to any title or titles of defendants and constituting a right of use, occupancy and possession superior to any title or titles of defendants.

16: That the Court erred in holding in and by said decree that the object of said Act of 1851 was not fully served when the Mexican grantees presented their title for confirmation, without presentation by said Indians of their said title.

17: That the Court erred in holding in and by said decree that said Tejon Indians, being wards of the United States and *non sui juris* were charged with knowledge of said Act of March 3, 1851, or any of its provisions or requirements, and that it was the intention of Congress to make said Act applicable to such Indians or bind them by any of its provisions.

18: That the Court erred in holding in and by said decree that the case at bar is governed by the decision in *Barker v. Harvey*, 181 U. S. 481; 126 Calif. 262, and that it is not distinguishable in fact therefrom, especially in that in *Barker v. Harvey* it was found as a fact that prior to the Mexican grant the Indians there concerned had abandoned their occupancy and that the grant as finally allowed contained no provision for their protection, whereas, in the case

at bar the land in controversy has been continuously occupied and is still occupied by the Tejon Indians, except as to parts thereof from which they have been wrongfully and forcibly expelled by defendants, and the Mexican grant as finally confirmed contains a specific provision for the protection of said Tejon Indians.

19: That the Court erred in holding in and by said decree that the provision in the Mexican grant described in the complaint forbidding interference with the cultivation and improvements of the Tejon Indians is no longer in force, and that the same was superseded or extinguished by the issuance to defendants of the United States patent described in the complaint, or in any other way, or at all.

20: That the Court erred in holding in and by said decree that said United States patent changed or enlarged the rights of the grantees therein by relieving or discharging said rights of or from the easement, trust or use of occupancy and possession by the Tejon Indians of a portion of the land conveyed by said patent and described in the complaint.

WHEREFORE, plaintiff prays that the errors herein be corrected and its appeal sustained; that said judgment and decree be reversed; that the bill of complaint herein be sustained as against defendants' motion to dismiss, and that defendants be required to answer said bill.

Joseph C. Burke

United States Attorney.
George A. H. Fraser,

Special Assistant to the Attorney General,
Attorneys for Plaintiff.

[Endorsed]: B 68 UNITED STATES OF AMERICA, SO. DISTRICT OF CALIFORNIA, NORTHERN DIVISION. THE UNITED STATES OF AMERICA, Plaintiff, - vs - TITLE INSURANCE AND TRUST COMPANY, a corporation, SECURITY TRUST AND SAVINGS BANK, a corporation, HARRY CHANDLER, O. P. BRANT, M. H. SHERMAN and E. P. CLARK, Defendants. IN THE DISTRICT COURT No. B-68. In Equity. ASSIGNMENT OF ERRORS. FILED MAR 10 1922 CHAS. N. WILLIAMS, Clerk By Edmund L Smith
Deputy Clerk

UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.	)	IN THE DISTRICT COURT.
	)	SS. No. B-68
	)	IN EQUITY.

THE UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
- v -)	
)	
TITLE INSURANCE AND TRUST COMPANY, a corporation, SECURITY TRUST AND SAVINGS BANK, a corporation, HARRY CHANDLER, O. P. BRANT, M. H. SHERMAN and E. P. CLARK,	)	ORDER ALLOWING APPEAL.
)	
Defendants.)	

THIS CAUSE coming on this day to be heard upon the petition of plaintiff for an order allowing an appeal

to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree made and entered herein on, to-wit: the 6th day of October, 1921, as in said petition more fully set forth, and the court, being now fully advised in the premises, it is hereby

ORDERED That an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from said final decree is hereby allowed.

Given at Los Angeles, California, this 10th day of March, 1922.

BY THE COURT

Trippet.

District Judge.

Approved as to form but reserving all rights O'Melveny Millikin and Tuller attorneys for defendants

[Endorsed]: B 68 UNITED STATES OF AMERICA, SO. DISTRICT OF CALIFORNIA NORTHERN DIVISION. THE UNITED STATES OF AMERICA, plaintiff, - vs - TITLE INSURANCE AND TRUST COMPANY, a corporation, SECURITY TRUST AND SAVINGS BANK, a corporation, HARRY CHANDLER, O. P. BRANT, M. H. SHERMAN and E. P. CLARK, defendants. IN THE DISTRICT COURT No. B-68 IN EQUITY ORDER ALLOWING APPEAL. FILED MAR 10 1922 CHAS. N. WILLIAMS, Clerk By Edmund L. Smith *Deputy Clerk* Eq. O. Bk.

UNITED STATES OF AMERICA District Court
of the United States SOUTHERN DISTRICT
OF CALIFORNIA, NORTHERN
DIVISION.

THE UNITED STATES OF AMERICA,	}	CLERK'S OFFICE
Plaintiff,		
- vs -		
TITLE INSURANCE AND TRUST COMPANY, a corporation, SECURITY TRUST AND SAVINGS BANK, a corporation, HARRY CHANDLER, O. P. BRANT, M. H. SHERMAN and E. P. CLARK,	}	No. B-68 In Equity.
Defendants.		
		PRÆCIPE

TO THE CLERK OF SAID COURT:

Sir:

Please issue transcript of record on appeal in the above entitled case, consisting of:

Complaint

Summons with return of Service.

Motion to dismiss.

Order sustaining the motion to dismiss.

Plaintiff's election to stand on complaint.

Judgment of dismissal.

Plaintiff's exceptions to order sustaining motion to dismiss and to judgment.

Statement that no opinion was rendered by the Court.

Certificate of Clerk to judgment roll.

Petition for appeal.

Assignment of Errors.

Order allowing appeal.

Præcipe for transcript of record.

Proof of service of same on defendants.

Citation and return of service thereon.

Clerk's certificate to transcript of record.

Joseph C. Burke

United States District Attorney.

George A. H. Fraser,

Special Assistant to the Attorney General

Attorneys for Plaintiff.

[Endorsed]: RECEIPT OF COPY OF THE FOREGOING PRÆCIPE IS HEREBY ACKNOWLEDGED ON BEHALF OF DEFENDANTS AT LOS ANGELES, CALIFORNIA, THIS 10 DAY OF MARCH, 1922. O'Melveny, Millikin & Tuller, Attorneys for Defendants.

No. B-68 U. S. District Court SOUTHERN DISTRICT OF CALIFORNIA Northern Division. THE UNITED STATES OF AMERICA, Plaintiff, - vs - TITLE INSURANCE AND TRUST COMPANY, a corporation, SECURITY TRUST AND SAVINGS BANK, a corporation, HARRY CHANDLER, O. P. BRANT, M. H. SHERMAN and E. P. CLARK, Defendants. PRÆCIPE FOR TRANSCRIPT ON APPEAL TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT. FILED MAR 11 1922 CHAS. N. WILLIAMS Clerk. *By Edmund L. Smith Deputy Clerk.*

IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF
CALIFORNIA, SOUTHERN
DIVISION.

THE UNITED STATES OF)	
AMERICA,)	
	)	Plaintiff,
vs.)	
TITLE INSURANCE AND)	
TRUST COMPANY, a corpora-	)	CLERK'S
tion, SECURITY TRUST AND	)	CERTIFICATE.
SAVINGS BANK, a corporation,)	
HARRY CHANDLER, O. P.)	
BRANT, M. H. SHERMAN and)	
E. P. CLARK,)	
Defendants.)	

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 44 pages, numbered from 1 to 44 inclusive, to be the transcript of record on appeal in the above entitled cause, as printed by appellant and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation, complaint, summons with return of service, motion to dismiss, decree of dismissal, certificate of clerk to judgment roll, petition for appeal, assignment of errors, order allowing appeal, præcipe for transcript and proof of service, and I do further certify that no opinion was rendered by the court.

I DO FURTHER CERTIFY that the fees of the clerk for comparing, correcting and certifying the foregoing record on appeal amount to and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this 31st day of ^{March} April, in the year of our Lord One Thousand Nine Hundred and Twenty-two, and of our Independence the One Hundred and Forty-sixth.

CHAS. N. WILLIAMS,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By *R. S. Zimmerman*

Deputy.

(Seal)